



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Investigation on the Commission's Own Motion)
into the Practices of the Southern California)
Edison Company to Determine the Violations of)
the Laws, Rules, and Regulations Governing)
Performance Based Ratemaking, its Monitoring)
and Reporting to the Commission, Refunds to)
Customers and other Relief, and Future)
Performance Based Ratemaking for this Utility.)

I.06-06-014

(Filed June 15, 2006)

**MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U-338 E) REGARDING
CONFIDENTIALITY OF CPSD REPORT AND OTHER SUPPORTING DOCUMENTS**

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Dated: **June 29, 2006**

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I.

INTRODUCTION

In accordance with the schedule set forth in Order Instituting Investigation (I. or OII) 06-06-014, issued June 15, 2006, Southern California Edison Company (SCE) hereby responds to the direction of the California Public Utilities Commission (CPUC or Commission) to justify confidential treatment¹ of (1) portions of the June 15, 2006 Consumer Protection and Safety Division (CPSD) Report, (2) SCE's interview notes, (3) transcripts of examinations under oath taken by CPSD, (4) and other information that was obtained by the CPSD through discovery requests. In a number of instances, SCE has provided confidential or sensitive information to the CPSD pursuant to Public Utilities Code Section 583 and General Order 66-C, with the understanding that SCE would have the opportunity to consider the continued need for confidentiality of that information after having had the opportunity to review the CPSD Report.

¹ I.06-06-014, p. 3.

Throughout the events that preceded the issuance of this OIL, SCE informed the CPUC of its internal investigations related to its performance-based ratemaking (PBR) incentive mechanisms, briefed CPUC officials on SCE's initial conclusions, and provided its investigation reports on the customer satisfaction, employee health and safety, and system reliability PBR incentive mechanisms to the Commission. SCE has also cooperated with the CPSD's efforts over the past twenty months to obtain the information the CPSD needed to complete its report. SCE appreciates the opportunity to address concerns regarding the public release of information contained in portions of CPSD's Report, as well as in the other documents SCE provided to the CPSD or that have been independently developed by the CPSD. Immediately prior to SCE filing this motion, the CPSD and SCE discussed confidentiality issues and reached agreement on interim procedures to protect SCE's confidentiality concerns and still provide for public availability of CPSD's Report and other supporting documents.

II.

DISCUSSION

A. CPSD's June 15, 2006 Report

The CPSD Report reasonably protects employee privacy and promotes candor by using code numbers and job titles in lieu of the actual names of SCE personnel that were identified, interviewed or examined in the course of SCE's and CPSD's investigations. Where portions of SCE's interview notes or CPSD's examinations under oath are cited or quoted in CPSD's Report, employees are generally identified by a code number and job title, *e.g.*, CS1129 (Planner) or CS1135 (Planning Supervisor). SCE does not object to the public release of the CPSD Report in its current form with the additional masking of a few managerial employee names (other than the SCE officers that are specifically named in the CPSD Report).² SCE

² Several names of SCE nonmanagerial employees appear to have been inadvertently retained in CPSD's Report. SCE proposes to replace these names with code numbers to be consistent with the remainder of the report.

believes this additional masking of names can be accomplished by June 30, 2006, and when that process has been completed, the CPSD Report should be made available for public release. SCE and CPSD have a list that links the code numbers to employee names, and that list should be made available to parties to this proceeding subject to an appropriate nondisclosure agreement. This balance of confidentiality and public disclosure is a reasonable approach and provides a means of complete access to the information that interested parties need to effectively participate in this proceeding and for the CPUC to conduct its investigation.

B. SCE's Interview Notes Provided To CPSD

As part of its customer satisfaction investigation, SCE conducted approximately 300 interviews of employees, starting from the level of planners and continuing up through managerial levels to the officer level. These interviews formed the basis for SCE's investigation and led directly to SCE's conclusions regarding the nature and extent of wrongdoing, the disciplinary actions that were taken, and SCE's offer to refund a portion of the rewards that SCE had claimed under the customer satisfaction incentive mechanism. SCE's interview notes were provided to the CPSD with employee names replaced by code numbers,³ with some portions redacted to exclude attorney work product, and include the job title of the person being interviewed. Thus, SCE does not object to the release of these interview notes to parties to this proceeding.⁴ In addition, as with CPSD's Report, interested parties to this proceeding should be able to obtain a copy of the list of code numbers that is linked to employee names upon the execution of an appropriate nondisclosure agreement.

³ Some additional masking of employee names in SCE's interview notes will be required. SCE expects to complete that revision shortly, and will inform the CPSD when this work has been completed.

⁴ The disclosure of SCE's redacted interview notes does not constitute a broader waiver of the attorney-client or work-product privileges.

C. Transcripts of the Examinations Under Oath

The CPSD undertook examinations under oath of 40 current and former SCE employees. Portions of the examinations under oath are quoted in CPSD's Report with code numbers substituted for employee names.⁵ After the OII was issued, CPSD made arrangements for SCE to obtain electronic copies of the transcripts of these examinations. These transcripts should also be made available to parties provided code numbers are substituted in the transcripts for employee names (except for SCE officers), and with job titles for the employees identified. SCE proposes to work with the CPSD to perform this substitution in the transcripts. When that process has been completed, SCE would not object to the release of the transcripts to parties to this proceeding. As with CPSD's Report and SCE's interview notes, interested parties to this proceeding should be able to obtain copies of the code number list of employee names upon execution of an appropriate nondisclosure agreement.

D. SCE's Responses to CPSD Data Requests

SCE has also provided extensive data request responses to the CPSD, some of which contain confidential employee information regarding performance reviews, disciplinary action, compensation, or medical information. Other responses contain proprietary information. These have been provided to the CPSD pursuant to Public Utilities Code Section 583 and General Order 66-C. While SCE has not had the opportunity to completely review each response in the time provided for this filing, SCE will provide the CPSD with a list of those responses that do not require confidential treatment by July 7, 2006. Any other response that SCE identifies as containing confidential employee or proprietary information will continue to receive confidential treatment based on recognized legal and statutory exceptions to public release of such information. Where applicable, and upon request of the CPSD, SCE will redact confidential information from SCE's data request responses and employee names other than SCE officers

⁵ See, e.g., CPSD Report, pp. 15 – 16.

will be replaced by the applicable code number. As with CPSD's Report, SCE's interview notes, and the transcripts of examinations under oath, the redacted and coded versions of these data request responses could be publicly disclosed. Interest parties would also be able to obtain the code list of employee names upon execution of an appropriate nondisclosure agreement.

E. Provision of Confidential Information To Other Parties

SCE and CPSD agree that other parties to this proceeding should have access to the code list that links the numbers used in any of the documents discussed above to actual employee names by executing a nondisclosure agreement. SCE has attached a proposed *pro forma* nondisclosure agreement as an Appendix to this motion.

F. Future Modification Of These Proposals

SCE and CPSD agree that the procedures and substance of their agreement is interim, and that any interested party may at any time request that the Commission adopt changes to the procedures they have agreed to in this motion, *e.g.*, when hearings commence. SCE and CPSD agree that all other parties should have a reasonable opportunity to respond to such a request. While CPSD agrees on an interim basis to the procedures described above, SCE understands that CPSD does not concede that SCE has made an adequate and legally recognized demonstration for confidential treatment of any material.

III.

CONCLUSION

For the reasons discussed above, and with the conditions specified herein, SCE does not object to the public release of CPSD's Report and other supporting documents described herein. Counsel for CPSD has authorized SCE to state that the CPSD concurs with these recommendations and conditions.

Respectfully submitted,

JAMES M. LEHRER
BRUCE A. REED
DAVID R. GARCIA

/s/ Bruce A. Reed

By: Bruce A. Reed

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June 29, 2006

APPENDIX
NONDISCLOSURE AGREEMENT

NONDISCLOSURE AGREEMENT

1. This Nondisclosure Agreement shall be available to and govern the use of all Protected Materials produced by Southern California Edison Company (SCE) to [Interested Party] in I.06-06-014. Notwithstanding any order terminating this proceeding, this Nondisclosure Agreement shall remain in effect.
2. SCE may designate as protected those materials which customarily are treated by SCE as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject SCE, its consultants, or its customers to risk of competitive disadvantage or other business injury.
3. Definitions – for purposes of this Nondisclosure Agreement:
 - (a) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which employees or agents of [INTERESTED PARTY] who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Nondisclosure Agreement, and that they have read the Nondisclosure Agreement and agree to be bound by it.
 - (b) The term “Protected Materials” refers to the confidential or proprietary information contained in any of the following: (i) any testimony provided in this proceeding; (ii) any data request or data response provided in this proceeding; (iii) any pleading provided in this proceeding; (iv) any document provided in this proceeding; (v) any other materials that are made subject to this Nondisclosure Agreement by any Assigned Administrative Law Judge (ALJ), Law and Motion ALJ, or (iv) Notes of Protected Materials.
 - (c) The term “Notes of Protected Materials” refers to memoranda, handwritten notes, or any other form of information (including information in electronic form) that copies or discloses Protected Materials. Except as specifically provided otherwise in this Nondisclosure Agreement, notes of Protected Materials are subject to the same restrictions as are Protected Materials.
 - (d) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:
 - (1) An attorney who has made an appearance in this proceeding for [INTERESTED PARTY];

- (2) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in (1);
 - (3) An expert or an employee of an expert retained by [INTERESTED PARTY] for the purpose of advising, preparing for or testifying in this proceeding;
 - (4) Employees or other representatives of [INTERESTED PARTY] in this proceeding with responsibility for this proceeding.
- 4. Protected Materials shall be made available under the terms of Nondisclosure Agreement only to [INTERESTED PARTY] and only through its Reviewing Representatives. SCE has the right to refuse to provide [INTERESTED PARTY] or Reviewing Representatives access to Protected Materials if grounds exist such that [INTERESTED PARTY] or the Reviewing Representatives could use Protected Materials for commercial or improper usage. If [INTERESTED PARTY] disagrees with SCE's refusal to provide Protected Materials, [INTERESTED PARTY] may seek resolution under the procedures set forth in Section 10(a).
- 5.
 - (a) Protected Materials shall remain available to [INTERESTED PARTY] until the later of the date that a Decision terminating this proceeding becomes no longer subject to judicial review, or the date that any other California Public Utilities Commission (CPUC) proceeding relating to the Protected Material is concluded and is no longer subject to judicial review.
 - (b) Within 15 calendar days of such date set forth in Section 5(a) and upon request by SCE, [INTERESTED PARTY] shall return to SCE the Protected Materials, including Notes of Protected Materials, copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, or, upon agreement by SCE, shall destroy the materials in a manner determined by SCE. Within such time period, [INTERESTED PARTY] shall also submit to SCE an affidavit stating that, to the best of its knowledge, all Protected

Materials and documents containing Protected Materials have been returned or have been destroyed.

6. All Protected Materials shall be maintained by [INTERESTED PARTY] in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to this Nondisclosure Agreement.
7. (a) Protected Materials shall be treated as confidential by [INTERESTED PARTY] and by the Reviewing Representative in accordance with the certificate executed pursuant to Section 8. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in Agreement to carry out that person's responsibilities in this proceeding.

(a) Reviewing Representatives may make notes of Protected Materials which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials. Reviewing Representatives may not make copies of Protected Materials unless agreed to by SCE. Any such copies become Protected Materials.
8. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Nondisclosure Agreement unless Reviewing Representative has first executed a Non-Disclosure Certificate. A copy of each Non-Disclosure Certificate shall be provided to counsel for [INTERESTED PARTY] and to SCE prior to disclosure of any Protected Material to that Reviewing Representative.
9. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and receiving Reviewing Representative both have executed a Non-Disclosure

Certificate. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position that is not qualified to be a Reviewing Representative under paragraph 3(c), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Nondisclosure Agreement and the certificate.

10.

- (a) Subject to Section 15, the Presiding ALJ, or Law and Motion ALJ, as appropriate, shall resolve any disputes arising under this Nondisclosure Agreement. Prior to presenting any dispute under this Nondisclosure Agreement to the Presiding ALJ or Law and Motion ALJ, the parties to the dispute shall meet and confer and use their best efforts to resolve the dispute.
- (b) If [INTERESTED PARTY] contests the designation of materials as protected, it shall notify SCE by specifying in writing the materials whose designation is contested. This Nondisclosure Agreement shall continue to apply to such materials after the notification is made. [INTERESTED PARTY] may seek resolution of the dispute under the procedures set forth in Section 10(a). If the Presiding ALJ or Law and Motion ALJ find that the materials at issue are not entitled to protection, the procedures of Section 15 shall apply.

11. All copies of all documents reflecting Protected Materials that are filed with the CPUC, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Nondisclosure Agreement. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed with the CPUC under seal and served under seal upon the Presiding ALJ.

- If [INTERESTED PARTY] desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings, [INTERESTED PARTY] shall first notify counsel for SCE or the Presiding ALJ of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding ALJ or the CPUC.
12. Nothing in this Nondisclosure Agreement shall be construed as precluding SCE from objecting to the use of Protected Materials on any legal grounds.
 13. Nothing in this Nondisclosure Agreement shall preclude [INTERESTED PARTY] from requesting the Presiding ALJ or any other body having appropriate authority, to find that this Nondisclosure Agreement should not apply to all or any materials previously designated as Protected Materials pursuant to this Nondisclosure Agreement.
 14. All Protected Materials filed with the CPUC, the Presiding ALJ, or the Law and Motion ALJ, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Nondisclosure Agreement.
 15. If the CPUC, Presiding ALJ, or the Law and Motion ALJ find at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Nondisclosure Agreement for seven (7) business days from the date of the such finding or ruling unless, within such period, a party files a rehearing request or an interlocutory appeal on that finding with the CPUC, in which case the materials shall remain protected until seven (7) business days after the final decision resolving the question of confidentiality. SCE and [INTERESTED

PARTY] do not waive their rights to seek additional administrative or judicial remedies after the CPUC's or the Presiding ALJ's or the Law and Motion ALJ's decision respecting Protected Materials or Reviewing Representatives, or the CPUC's denial of an appeal or rehearing thereof.

16. SCE does not waive the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.
17. Contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Nondisclosure Agreement and shall be used only in connection with this proceeding.

IN WITNESS WHEREOF, the authorized representatives of SCE and [INTERESTED PARTY] have executed duplicate original copies of this Agreement as of the dates written below.

SOUTHERN CALIFORNIA
EDISON COMPANY

[Interested Party]

BY: _____	BY: _____
TITLE: _____	TITLE: _____
DATED: _____	DATED: _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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<u>Performance Based Ratemaking for this Utility.</u>)	

NON-DISCLOSURE CERTIFICATE

I, _____, have been asked by _____ to inspect certain materials that have been designated as "Protected Materials" under the Nondisclosure Agreement entered in the above-captioned matter.

1. I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Nondisclosure Agreement, that I have been given a copy of and have read the Nondisclosure Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies of discloses Protected Materials shall not be disclosed to anyone other than in accordance with the Nondisclosure Agreement.

2. I understand that my review of Protected Materials is solely for the purpose of participating in the above-captioned matter, and that any other use or disclosure of Protected Materials by me is a violation of the Nondisclosure Agreement.

3. I hereby agree to submit to the exclusive jurisdiction of the California Public Utilities Commission for the enforcement of the undertakings I have made hereby and I waive any objection to venue laid with the Commission for enforcement of the Nondisclosure Agreement.

By: _____
Name: _____
Representing: _____
Employer: _____
Position: _____
Business Address: _____
Business Phone: _____

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U-338 E) REGARDING CONFIDENTIALITY OF CPSD REPORT AND OTHER SUPPORTING DOCUMENTS on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

- ☒ Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.
- ☐ Placing the copies in sealed envelopes and causing such envelopes to be delivered by hand or by overnight courier to the offices of the Commission or other addressee(s).
- ☐ Placing copies in properly addressed sealed envelopes and depositing such copies in the United States mail with first-class postage prepaid to all parties.
- ☐ Directing Prographics to place the copies in properly addressed sealed envelopes and to deposit such envelopes in the United States mail with first-class postage prepaid to all parties.

Executed this **29th day of June, 2006**, at Rosemead, California.

/s/ Christine Sanchez
Christine Sanchez
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I.06-06-014

Thursday, June 29, 2006

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